

**ATTORNEYS GENERAL OF THE STATES OF WASHINGTON, CONNECTICUT,  
DELAWARE, ILLINOIS, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO,  
NEW YORK, OREGON, AND RHODE ISLAND, AND THE COMMONWEALTH OF  
MASSACHUSETTS**

December 30, 2020

By E-Mail and Online Portal

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Re: Marsh Creek East 3D Seismic Survey Environmental Assessment, DOI-BLM-AK-R000-2021-0001-EA (Dec. 15, 2020), Notice of Availability of the Coastal Plain Marsh Creek East Seismic Exploration Environmental Assessment, 85 Fed. Reg. 81485 (Dec. 16, 2020): Comments Submitted by State Attorneys General

Dear Ms. LaMarr:

The undersigned Attorneys General submit these comments on the Bureau of Land Management's (BLM) Marsh Creek East 3D Seismic Survey Environmental Assessment (EA) and draft Finding of No New Significant Impact (FONNSI). We strongly object to BLM's draft analysis and proposed authorization of seismic survey testing (Proposed Action).

BLM's cursory EA and draft FONNSI and limited 14-day public comment period are woefully inadequate and inconsistent with the mandates of the National Environmental Policy Act (NEPA) and the purposes for which Congress created the Arctic Refuge. The Proposed Action incorporates and relies upon BLM's unlawful Coastal Plain Leasing EIS and Record of Decision, which are already subject to multiple federal court challenges.<sup>1</sup> Further, the Proposed Action relies on unlawful NEPA regulations promulgated by the Council on Environmental Quality in 2020, which are also subject to multiple federal court challenges based on their flagrant disregard for the mandate of NEPA itself.<sup>2</sup> BLM's rushed, unlawful action—among a series of rushed unlawful actions, including a last minute proposed lease sale—is a transparent effort to advance an unlawful drilling program and make an end run around bedrock environmental laws just days before the

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<sup>1</sup> See *Gwich'in Steering Comm. v. Bernhardt*, No. 3:20-cv-00204-SLG (D. Alaska filed Aug. 24, 2020); *Nat'l Audubon Soc'y v. Bernhardt*, No. 3:20-cv-00205-SLG (D. Alaska filed Aug. 24, 2020); *Native Vill. of Venetie Tribal Gov. v. Bernhardt*, No. 3:20-cv-00223-SLG (D. Alaska filed Sept. 9, 2020); *Washington et al. v. Bernhardt*, No. 3:20-cv-00224 (D. Alaska filed Sept. 9, 2020).

<sup>2</sup> Amended Complaint for Declaratory and Injunctive Relief, *California v. CEQ*, No. 3:20-cv-06057, ECF No. 75, (N.D. Cal. filed Nov. 23, 2020).

new Administration, which has committed to protecting the Arctic Refuge, takes office.<sup>3</sup> BLM should withdraw the EA and draft FONNSI and decline to permit seismic testing over 250,000 acres of the fragile Arctic National Wildlife Refuge's Coastal Plain (Coastal Plain) and federally managed offshore waters to seismic exploration activities that would significantly impact the environment (including the delicate tundra ecosystem that supports essential habitat for polar bears, caribou, and migratory birds) and cultural and subsistence resources.

If authorized, the Proposed Action would begin in January 2021 and allow seismic testing across 250,000 acres of the Coastal Plain and construction of 48.6 miles of snow access trails, extensive use of heavy machinery, construction of multiple airstrips, and laying of thousands of miles of receiver lines. The Proposed Action would also include mobile camp facilities that would support 180 people and move every five to seven days as the testing activities progress. Food and other solid waste would be incinerated daily and up to 3,000 gallons of grey water per day could be discharged to the environment from the camp facilities. Together, the vehicles and camp facilities would require approximately 6,000 gallons of fuel per day. During July and August, cleanup and inspection work would require up to 600 aircraft landings and takeoffs as campsites are inspected and debris is removed. Given the significant environmental impacts of this Proposed Action, NEPA requires a detailed environmental review with a robust public comment process. But, here, BLM developed a cursory EA and draft FONNSI that tiers to BLM's unlawful Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (Leasing Program EIS) and allows a limited and inadequate two-week public review process over the December holiday period.

BLM's EA and draft FONNSI do not comply with NEPA. In particular, the EA and draft FONNSI violate NEPA by:

- (a) relying on the unlawful Leasing Program EIS, which is subject to multiple pending lawsuits, including one filed by the undersigned States;
- (b) ignoring significant impacts that require a more detailed environmental review through an environmental impact statement (EIS);
- (c) failing to analyze a reasonable range of alternatives; and
- (d) failing to properly analyze direct, indirect, and cumulative impacts, including impacts to migratory birds and climate change.

BLM's rush to authorization also sidelines NEPA's public process and ignores NEPA's mandate to make well-informed decisions. BLM also relied on the unlawful 2020 NEPA regulations promulgated by CEQ, which are themselves subject to legal challenge by the undersigned states.<sup>4</sup>

In addition, the Department of the Interior, of which BLM is a part, has not complied with the statutory mandates of the National Refuge System Administration Act (Refuge Administration

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<sup>3</sup> See *The Biden Plan for a Clean Energy Revolution and Environmental Justice* (committing to "Day One" Executive actions to protect "America's natural treasures by permanently protecting the Arctic National Wildlife Refuge,"), <https://joebiden.com/climate-plan/>.

<sup>4</sup> Complaint for Declaratory and Injunctive Relief at 52–54, *Washington v. Bernhardt*, No. 3:20-cv-00224, ECF No. 1 (D. Alaska filed Sept. 9, 2020).

Act) and the Alaska National Interest Lands Conservation Act (ANILCA) to ensure authorized uses of the Refuge are compatible with and fulfill the purposes for which Congress created the Refuge—a fatal infirmity, particularly here where, on its face, the proposed seismic testing is inconsistent with those purposes.

#### **A. BLM Should Extend the Public Comment Process**

Meaningful public participation on proposed federal actions is a cornerstone of the NEPA process. Allowing a 14-day comment period that spans the holiday season does not ensure meaningful public input on BLM’s review of the environmental impacts of seismic testing. To the contrary, the public comment period is timed to ensure that the public will not have sufficient time to review and comment on this critically important Proposed Action. BLM should extend the public comment period until at least January 30, 2021, to allow interested parties to comment on the Proposed Action.

#### **B. BLM’s Environmental Analysis Is Deficient**

##### **1. BLM’s EA tiers to the unlawful Coastal Plain Leasing Environmental Impact Statement**

BLM’s EA unlawfully tiers to and incorporates by reference BLM’s Coastal Plain Leasing EIS and Record of Decision (ROD),<sup>5</sup> which are subject to four lawsuits pending in federal district court in Alaska, three of which are seeking preliminary injunctions to halt any implementation of the Coastal Plain Leasing Program, including the proposed seismic testing.<sup>6</sup> As alleged in those lawsuits, the Leasing Program EIS and ROD failed to consider a reasonable range of alternatives, failed to assess adequately the environmental and cultural impacts associated with the Leasing Program, unlawfully interpreted the provisions of the Tax Act, failed to account for the conservation purposes for which the Refuge was created, and otherwise violated ANILCA and NEPA.

These deficiencies include BLM’s cursory analysis of impacts from seismic exploration. For instance, the Program EIS did not consider an alternative that, among other things, would have limited seismic testing on the Coastal Plain. In addition, while the EIS summarily concluded that seismic exploration during the winter would “have little effect on most birds,” this assertion is unsupported by any scientific studies or expert analysis. Without adequate data and consideration of significant impacts, BLM did not make reasoned choices in the Program EIS or ROD about programmatic parameters and potential mitigation measures with respect to seismic exploration, among other activities.

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<sup>5</sup> FONNSI 3; EA 6–8.

<sup>6</sup> *See supra* n.1.

Because the Program EIS and ROD do not comply with NEPA and are otherwise unlawful, BLM may not rely on them to support the proposed seismic testing.<sup>7</sup> Accordingly, BLM should withdraw the unlawful EA and draft FONNSI and either conduct a full EIS that complies with NEPA or withhold any authorization unless and until BLM prepares a new programmatic EIS and BLM performs a subsequent site-specific environmental review for the proposed seismic testing.

In addition, the required operating procedures authorized in the Leasing Program ROD and applied in the EA and draft FONNSI are inadequate to protect against the impacts of seismic testing. Not only are these operating procedures subject to waiver, modifications, or exceptions by BLM officials, but they are also inadequate to protect the fragile tundra ecosystems, prevent alteration of complex water systems, and protect the Coastal Plain's unparalleled migratory bird population.

## **2. BLM must prepare an Environmental Impact Statement prior to authorizing seismic exploration**

The significant environmental impacts of the proposed seismic testing and the unparalleled national importance of the Coastal Plain require that BLM prepare an EIS for the Proposed Action. All federal agencies, including BLM, must comply with NEPA "to the fullest extent possible" and must prepare a detailed EIS for "major Federal actions significantly affecting the quality of the human environment."<sup>8</sup> An EIS must discuss, among other things: the environmental impact of the proposed federal action, any adverse and unavoidable environmental effects, any alternatives to the Proposed Action, and any irreversible and irretrievable commitment of resources involved in the Proposed Action.<sup>9</sup> Because the Proposed Action here will significantly impact the quality of the environment, BLM must prepare an EIS before authorizing seismic testing in the Arctic Refuge.

The Proposed Action area, which encompasses more than a quarter million acres of the Coastal Plain, includes essential habitat for migratory birds, polar bears, caribou, and other wildlife. As noted above, snow trails, airstrips, receiver lines, and camp facilities collectively will disrupt thousands of miles of the Coastal Plain. Large equipment including camp trailers, rubber tracked vehicles (e.g. Steigers), and fuel tanks will crisscross the Coastal Plain. Massive amounts of snow and ice will be removed from the tundra and lakes to supply camp facilities. Aircraft will take off and land repeatedly during the winter months and resume during the summer when migratory birds are present. Even in its cursory EA, BLM acknowledges that snow trails created by seismic testing will create both short and long-term impacts to vegetation that could include impacts to subsistence resources and changes in species composition.<sup>10</sup> In addition, seismic activities will reduce the wilderness values of the Coastal Plain, affect vegetation and soil chemistry, potentially cause

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<sup>7</sup> See *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1074 (9th Cir. 2002) (an environmental assessment may not tier to a legally deficient EIS).

<sup>8</sup> 42 U.S.C. § 4332.

<sup>9</sup> *Id.* § 4332(2)(C).

<sup>10</sup> EA 29.

irreversible hydrological changes, potentially impact caribou health and survival, and harm threatened polar bears and their habitat.<sup>11</sup>

Yet, the Proposed Action does not adequately review potential impacts to the fragile tundra ecosystem or wildlife, including to migratory birds that migrate from the Coastal Plain to the lower 48 states.<sup>12</sup> While the proposed seismic testing would occur during winter months, the proposed summer cleanup and inspection activities would occur in July and August when a high density of migratory birds are present. These activities would involve 450 to 600 helicopter landings and takeoffs in important migratory bird habitat.

The Proposed Action would expose the Coastal Plain to seismic testing for only the second time. The first seismic exploration occurred in the winter of 1984–85 and left scars on the landscape that persisted for decades and, in some places, are still visible.<sup>13</sup> With new technology, seismic exploration now creates a denser grid, which could increase disturbance to wildlife.<sup>14</sup> The expansive grid of seismic tracks on nearly half a million acres of the Coastal Plain also will irreparably destroy the environmental baseline, making it impossible to accurately account for the current abundance of wildlife and intricacies of the ecosystem prior to seismic exploration and other oil and gas activities on the Coastal Plain. As the undersigned States noted in their complaint challenging the Leasing Program EIS, that baseline information is particularly important for understanding impacts to migratory birds, many of which frequent the undersigned States.<sup>15</sup>

### **3. BLM must consider additional alternatives to satisfy NEPA**

Despite this expansive impact to a third of the Arctic Refuge's Coastal Plain, BLM has not conducted a detailed environmental review in compliance with NEPA. Instead, BLM prepared a cursory EA that analyzes only two alternatives: Alternative A, which analyzes the project as proposed by the project applicant; and Alternative B, the no action alternative. This is not a reasonable range of alternatives under NEPA.<sup>16</sup>

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<sup>11</sup> EA 45, 49, 61, 71.

<sup>12</sup> Bureau of Land Management, Environmental Impact Statement of the Coastal Plain Oil and Gas Leasing Program (Leasing Program EIS), at App. A, Map 3-26 (Sept. 2019).

<sup>13</sup> Martha K. Raynolds et al., *Landscape Impacts of 3D-Seismic Surveys in the Arctic National Wildlife Refuge, Alaska*, ECOLOGICAL APPLICATIONS, 10.1002/eap.2143, 5–15 (Oct. 2020); Janet C. Jorgenson et al., *Long-Term Recovery Patterns of Arctic Tundra After Winter Seismic Exploration*, ECOLOGICAL APPLICATIONS, 205, 219–20 (2010), *Publications, Agencies and Staff of the U.S. Department of Commerce*, Paper 187, <https://digitalcommons.unl.edu/usdeptcommercepub/187>; see also U.S. FISH AND WILDLIFE SERV., *ARCTIC SEISMIC TRAILS* (last updated Feb. 27, 2014), <https://www.fws.gov/refuge/arctic/seismic.html>.

<sup>14</sup> Ryan R. Wilson & George M. Durner, *Seismic Survey Design and Effects on Maternal Polar Bear Dens*, THE J. OF WILDLIFE MGMT., 201, 202 (Nov. 2019).

<sup>15</sup> Complaint for Declaratory and Injunctive Relief at 52–54, *Washington v. Bernhardt*, No. 3:20-cv-00224, ECF No. 1 (D. Alaska filed Sept. 9, 2020).

<sup>16</sup> See 42 U.S.C. § 4332.

At a minimum, BLM should consider in detail an action alternative that seeks to protect the conservation purposes of the Arctic Refuge, including by significantly limiting seismic surveys and associated activities on the Coastal Plain, limiting surface disturbance, limiting flights, and incorporating more stringent required operating procedures that better protect the delicate tundra ecosystem, unparalleled biodiversity, and cultural resources of the area.

#### **4. BLM must adequately analyze direct, indirect, and cumulative impacts**

To satisfy NEPA's requirements, BLM must conduct a thorough review of the direct, indirect, and cumulative impacts of each alternative. This analysis must include, at a minimum, the direct, indirect, and cumulative impacts of: the construction and operation of hundreds of miles of snow access trails, air strips, receiver lines, and mobile camp facilities; emissions associated with seismic exploration; the Proposed Action and other seismic testing in the region on migratory birds; snow removal, water withdrawal, and grey water discharge on migratory birds; summer flight operations on migratory birds; the Proposed Action's potential fuel spills; and the Proposed Action on all plants and wildlife, including polar bears and caribou. BLM's environmental review also must gather appropriate baseline information about water levels and distribution and migratory bird populations, so that BLM can fully assess the potential impacts of the Proposed Action. BLM must not rely on stale data or conclusory assertions to support its analysis.<sup>17</sup> BLM must also analyze the Proposed Action's direct, indirect, and cumulative impacts to subsistence resources, public health, and environmental justice.<sup>18</sup>

Yet, instead of preparing a robust environmental review of direct, indirect, and cumulative impacts, BLM conducted cursory analyses of all impacts together and ignored significant indirect and cumulative effects. For example, BLM refused to analyze the on-the-ground actions associated with issuance of oil and gas leases on the Coastal Plain, claiming that these are not "reasonably foreseeable at this point."<sup>19</sup> BLM also did not consider the cumulative impacts of future seismic testing in the Coastal Plain or the increased impacts of climate change that may occur as a result of Coastal Plain development and production.<sup>20</sup>

BLM's cursory and flawed analysis of the impacts to migratory birds from the Proposed Action fails to comply with NEPA. The EA entirely lacks a section specific to migratory bird impacts and does not contemplate mitigating impacts to migratory birds, and the draft FONNSI mentions shorebird impacts only in passing.<sup>21</sup> The discussion of birds in Appendix F merely identifies basic

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<sup>17</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1086 (9th Cir. 2011) ("Reliance on data that is too stale to carry the weight assigned to it may be arbitrary and capricious.").

<sup>18</sup> Among other things, BLM should ensure that the Proposed Action complies with Executive Order 12898, which directs federal agencies to identify and address the disproportionately high and adverse human health and environmental effects of their actions on minority and low-income populations. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

<sup>19</sup> EA 26.

<sup>20</sup> See EA 53.

<sup>21</sup> See generally EA; FONNSI 5.

information about migratory birds present in the action area but does not analyze impacts to those populations from the Proposed Action.<sup>22</sup> While a high density of migratory birds may not be present during winter seismic testing, BLM did not analyze whether the expansive seismic exploration activities will irreparably harm the important bird habitat of the Coastal Plain or how hundreds of summer aircraft flights, takeoffs, and landings will impact these populations during important life functions like molting and breeding. Not only is this omission fatal to the EA's compliance with NEPA, but it is also particularly glaring because migratory bird protection is one of the purposes for which Congress created the Arctic Refuge.<sup>23</sup>

Similarly, BLM does not analyze the direct, indirect, and cumulative impacts to climate change from increased greenhouse gas emissions associated with authorizing seismic testing on the Coastal Plain.<sup>24</sup> While BLM acknowledges that climate change currently impacts the Coastal Plain, BLM does not analyze how seismic testing on the Coastal Plain, either in isolation or combined with other oil and gas activities in the area, will contribute to increased climate change impacts in the future. Among other things, BLM fails to properly analyze how impacts to the permafrost from seismic development will contribute to permafrost melt and increase carbon dioxide and methane emissions that contribute to climate change.<sup>25</sup> Such permafrost melt occurred as a result of the prior seismic testing in the area.<sup>26</sup>

BLM's reliance on the analysis of long-term seismic impacts in the Leasing Program EIS is misplaced.<sup>27</sup> As noted above, that EIS, including its analysis of seismic testing, migratory bird impacts, and climate change impacts, is deficient. In addition, that EIS and the associated ROD repeatedly indicated that BLM would perform subsequent site-specific analysis of environmental impacts.<sup>28</sup> Now, BLM is shirking its NEPA obligations at the site-specific level. NEPA requires detailed environmental review *before* agencies authorize actions.<sup>29</sup> BLM does not comply with this mandate when it repeatedly kicks the can down the road.

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<sup>22</sup> See EA, Appx. F, 6–36.

<sup>23</sup> ANILCA, Pub. L. No. 96-487 § 303(2)(B), 94 Stat. 2371, 2390 (1980).

<sup>24</sup> See generally EA, FONNSI.

<sup>25</sup> See NASA, *A Warming Arctic Turns Topsy Turvy* (Apr. 28, 2020), <https://climate.nasa.gov/news/2968/a-warming-arctic-turns-topsy-turvy/> (last visited Dec. 29, 2020).

<sup>26</sup> See FWS, Seismic Trails, <https://www.fws.gov/refuge/arctic/seismic.html> (last visited Dec. 29, 2020); EA 50.

<sup>27</sup> See FONNSI 4.

<sup>28</sup> See generally Leasing Program EIS; see also Bureau of Land Management, Coastal Plain Oil and Gas Leasing Program Record of Decision 2 (citing “vast uncertainties” and committing that future decisions will be subject to project-specific analysis, including compliance with NEPA and other laws).

<sup>29</sup> 42 U.S.C. § 4332.

### **C. BLM Should Follow NEPA's Mandates, Not the Unlawful 2020 NEPA Rule**

The EA applies the Council on Environmental Quality's unlawful NEPA regulations promulgated on July 16, 2020,<sup>30</sup> and subject to five lawsuits, including one brought by the undersigned States.<sup>31</sup> Among other things, the 2020 NEPA regulations adopted unlawful provisions concerning the analyses of alternatives and project effects.

In particular, the 2020 NEPA regulations unlawfully limit the number of alternatives to the Proposed Action analyzed in an EA and the depth of that analysis by, among other things, removing the requirement that agencies "[r]igorously explore and objectively evaluate" all reasonable alternatives to the Proposed Action, eliminating consideration of alternatives outside the jurisdiction of the lead agency, and removing the requirement that agencies "[d]evote substantial treatment to each alternative."<sup>32</sup> Contrary to these provisions, NEPA's plain language requires agencies "to the fullest extent possible" to consider alternatives to the Proposed Action and limits action on proposals until after that comprehensive environmental review occurs.<sup>33</sup>

In addition, the 2020 NEPA regulations unlawfully limit the scope of environmental effects agencies must consider when conducting NEPA review. For example, the 2020 NEPA Regulations eliminate agency consideration of cumulative and indirect impacts, as well as impacts that are "remote in time" or "geographically remote."<sup>34</sup> Congress however, plainly intended NEPA to address such impacts. NEPA directs agencies to consider "any adverse environmental effects which cannot be avoided should the proposal be implemented,"<sup>35</sup> and "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity."<sup>36</sup> NEPA further directs agencies to "recognize the worldwide and long-range character of environmental problems," rather than examine the impacts of each federal proposal in a silo.<sup>37</sup> Indeed, the Senate Committee Report on NEPA stated that the statute was necessary because "[i]mportant decisions concerning the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the

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<sup>30</sup> Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Final Rule), 85 Fed. Reg. 43,304 (July 16, 2020) (codified at 40 C.F.R. pt. 1500).

<sup>31</sup> See Amended Complaint for Declaratory and Injunctive Relief, *California v. CEQ*, No. 3:20-cv-06057, ECF No. 75 (N.D. Cal. filed Nov. 23, 2020).

<sup>32</sup> Final Rule, 85 Fed. Reg. at 43,365 (codified at 40 C.F.R. § 1502.14).

<sup>33</sup> 42 U.S.C. § 4332, 4332(2)(C)(iii); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) ("Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.").

<sup>34</sup> Final Rule, 85 Fed. Reg. at 43,375 (codified at 40 C.F.R. § 1508.1(g)); see also *id.* at 43,360 (codified at 40 C.F.R. § 1501.3(b)(1)) (limiting the "affected area" in the significance analysis to "national, regional, or local").

<sup>35</sup> 42 U.S.C. § 4332(C)(ii).

<sup>36</sup> *Id.* § 4332(2)(C)(iv).

<sup>37</sup> *Id.* § 4332(2)(F).



recognized mistakes of previous decades.”<sup>38</sup> Avoiding this death by a thousand cuts demands that federal agencies carefully consider the cumulative environmental impacts of their actions with other related and unrelated actions.

The 2020 NEPA regulations also adopt an unlawful interpretation of significance, which BLM relies on here to support its draft FONNSI.<sup>39</sup> In particular, the 2020 NEPA regulations, revise the analysis of an agency action’s “significance,” to, among other things, (i) diminish the scope of actions that will require more detailed environmental review and (ii) eliminate review of important concerns like an action’s public health impacts, cumulative effects, effects on threatened and endangered species and their habitat, and proximity to historic or cultural resources, park lands, wetlands, wild and scenic rivers, or ecologically critical areas.<sup>40</sup>

By applying these regulations in the EA and draft FONNSI, BLM has run afoul of NEPA’s purpose and text, including its mandate to conduct detailed environmental review of significant environmental impacts and to apply NEPA “to the fullest extent” possible.<sup>41</sup>

#### **D. BLM Failed to Ensure that the Proposed Seismic Testing Fulfills and Is Compatible with the Arctic Refuge Purposes**

The Refuge Administration Act and ANILCA require that the Secretary of the Interior manage the Arctic Refuge consistent with the purposes for which Congress created the Refuge and that uses of the Refuge be compatible with and fulfill those purposes.<sup>42</sup> Although the EA mentions the Refuge purposes, BLM does not provide any explanation of how the Proposed Action will be compatible with and fulfill those purposes. In ANILCA, Congress identified four purposes of the Arctic Refuge, including conserving fish and wildlife populations and their habitats, fulfilling international treaty obligations related to migratory birds and their habitats, providing opportunities for subsistence use, and ensuring adequate water quality and quantity within the Refuge.<sup>43</sup> These four purposes built on the three original purposes of the Arctic Refuge to preserve “unique wildlife, wilderness, and recreational values.”<sup>44</sup> Although Congress added a Refuge purpose to provide for a limited oil and gas program on the Coastal Plain in a rider to the 2017 Tax Act,<sup>45</sup> these other purposes remain intact and BLM must act in a way that is compatible with and

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<sup>38</sup> S. Rep. No. 91-296, at 5.

<sup>39</sup> FONNSI 12.

<sup>40</sup> Final Rule, 85 Fed. Reg. at 43,360 (40 C.F.R. § 1501.3(b)).

<sup>41</sup> 42 U.S.C. § 4332.

<sup>42</sup> National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd–68ee; ANILCA §§ 303(2)(B), 304(a)–(b), 94 Stat. at 2390, 2393; 50 C.F.R. § 25.12.

<sup>43</sup> ANILCA § 303(2)(B), 94 Stat. at 2390.

<sup>44</sup> Public Land Order 2214, at 1 (Dec. 6, 1960); ANILCA § 305, 94 Stat. at 2395 (stating that original purposes remain in effect in addition to the four purposes identified in ANILCA).

<sup>45</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 tit. 2, § 20001, 131 Stat. 2054, 2235–37.

fulfills all of the purposes of the Arctic Refuge.<sup>46</sup> Before BLM can authorize seismic testing, the Secretary must ensure that the Proposed Action will be compatible with and fulfill the Refuge purposes, including conservation and protection of migratory birds and their habitat. BLM has not done so here.

## **E. Conclusion**

The Coastal Plain is a national treasure that supports a diversity of wildlife, including migratory birds that travel between the undersigned States and the Coastal Plain. For the above reasons, BLM should withdraw its EA and draft FONNSI and not authorize the proposed seismic testing, which threatens irreparable damage to one of the nation's last remaining wild places in an effort to develop extremely expensive oil and gas at a time when the nation is transitioning quickly towards greener energy sources.

Respectfully submitted,

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<sup>46</sup> 16 U.S.C. §§ 668dd(d)(3)(A)(i), 668ee(3).

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